

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 18610 of 2007(M)

PETITIONER:

R.V.KHALID, S/O R.V.MAMUTTY,
R.V.NIVAS, EAST NADA, GURUVAYOOR.

BY ADV. SRI.P.SANTHALINGAM
SRI.S.SHARAN

RESPONDENTS:

1. STATE OF KERALA,
REP. BY CHIEF SECRETARY TO GOVERNMENT,
SECRETARIATE, THIRUVANANTHAPURAM.
2. THE TAHSILDAR,
CHAVAKADU.
3. THE VILLAGE OFFICER,
THAIKKAD VILLAGE, GURUVAYOOR.

BY G.P. SRI. C.K. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE REPRESENTATION DATED 28.2.2007 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P2 TRUE COPY OF THE REPRESENTATION DATED 8.3.2007 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P3 TRUE COPY OF THE LETTER NO. 75386/SC1/06/RD DATED 29.12.2006 SENT BY PRINCIPAL SECRETARY TO GOVERNMENT TO THE CHAIRMAN, KERALA BUILDERS FORUM, CHAKOLES HABITAT PVT. LTD., PONDIT KARUPPAN ROAD, THEVARA FERRY.

EXT.P4 TRUE COPY OF THE ASSESSMENT ORDER NO. BTS-1245/07 DATED 18.5.2007 ISSUED BY 2ND RESPONDENT.

EXT.P4(a) TRUE COPY OF THE DEMAND NOTICE IN BTS-1245/07 DATED 19.5.2007 ISSUED UNDER SECTION 10 OF THE KERALA BUILDING TAX ACT.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 18610 OF 2007

Dated this the 10th day of July, 2007

JUDGMENT

Heard counsel for the petitioner and Government Pleader. Petitioner is challenging Ext.P4 and P4(a) assessment and demand of building tax in respect of a flat complex comprised of 14 apartments. According to the petitioner, each apartment is of the plinth area below the minimum that attracts building tax. Separate assessment is called for, for each flat, if building cost is shared by flat owners. However, it is seen from Ext.P4 that assessment is made for the building as a whole on the ground that building agreements are not registered. This view of the Tahsildar is incorrect because construction agreement is not compulsorily registrable document. In the circumstances, assessment completed treating the building as a single building is vacated with direction to the second respondent to consider construction agreements, title deeds and other documents and financial transactions to be produced by the petitioner and if flats are constructed under agreement between the builder and the owners, he will assess each flat separately.

If each flat does not have minimum plinth area after adding plinth area of common areas to the plinth area of each flat, then he will grant exemption. W.P. is disposed of vacating Exts.P4 and P4(a) with direction to the second respondent to recompute the liability within three months from now. Petitioner will produce a copy of this judgment before the second respondent for compliance. Interim orders issued on 18.6.2007 is vacated.

(C.N.RAMACHANDRAN NAIR)
Judge

